

Exhibit C

In The Matter Of:

*MERCK & CO., INC., SECURITIES, DERIVATIVE & "ERISA"
LITIGATION*

DAVID I. TABAK - Vol. 1
July 12, 2012



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<p style="text-align: center;">Page 1</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY -----x IN RE MERCK & CO., INC., SECURITIES, DERIVATIVE & "ERISA" LITIGATION MDL No. 1658 (SRC) -----x THIS DOCUMENT RELATES TO: THE CONSOLIDATED SECURITIES ACTION Case No. 3:05-CV-01151-SRC-MF Case No. 3:05-CV-02367-SRC-MF -----x July 12, 2012 9:36 a.m. Videotaped deposition of DAVID I. TABAK, pursuant to notice, at the offices of Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, New York, before Eric J. Finz, a Shorthand Reporter and Notary Public within and for the State of New York.</p>	<p style="text-align: center;">Page 3</p> <p>1 2 APPEARANCES: (Continued) 3 CRAVATH, SWAINE & MOORE LLP 4 Attorneys for all Defendants excluding Dr. Edward Scolnick 5 Worldwide Plaza 6 825 Eighth Avenue New York, NY 7 BY: CHRISTOPHER BELELIEU, ESQ. (chebelieu@cravath.com) 8 KARIN A. DEMASI, ESQ. (kdemasi@cravath.com) 9 -and- MATTHEW BOGESS, ESQ. (mboggess@cravath.com) 10 11 SCHULTE ROTH & ZABEL LLP 12 Attorneys for Defendant Dr. Edward Scolnick 919 Third Avenue 13 New York, NY 10022 14 BY: WILLIAM H. GUSSMAN, JR., ESQ. (bill.gussman@srz.com) 15 16 ALSO PRESENT: 17 IRIS JIANG, Cornerstone Research 18 MICHAEL MARCO, Summer Associate 19 WILLIAM PACE, Videographer Merrill Legal Solutions 20 21 22 23 24 25</p> <p style="text-align: center;">Page 2</p> <p>1 2 APPEARANCES: 3 BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP Co-Lead Counsel for Plaintiffs 4 1285 Avenue of the Americas New York, NY 10019 5 BY: SALVATORE J. GRAZIANO, ESQ. (sgraziano@blbglaw.com) 6 WILLIAM C. FREDERICKS, ESQ. (wfredericks@blbglaw.com) 7 -and- 8 ADAM H. WIERZBOWSKI, ESQ. (awierzbowski@blbglaw.com) 9 10 STULL, STULL & BRODY 11 Co-Lead Counsel for Plaintiffs 6 East 45th Street, 5th Floor 12 New York, NY 10017 13 BY: PATRICK K. SLYNE, ESQ. (pkslyne@ssbnyc.com) 14 -and- 15 MARK LEVINE, ESQ. (p.m. only) 16 17 BROWER PIVEN Co-Lead Counsel for Plaintiffs 488 Madison Avenue, 8th Floor 18 New York, NY 10022 19 BY: BRIAN C. KERR, ESQ. (kerr@brownpiven.com) 20 21 22 23 24 25</p> <p>1 2 09:36:25 3 09:36:32 4 09:36:40 5 09:36:42 6 09:36:44 7 09:36:47 8 09:36:51 9 09:36:52 10 09:36:55 11 09:36:56 12 09:36:57 13 09:37:01 14 09:37:04 15 09:37:06 16 09:37:07 17 09:37:09 18 09:37:11 19 09:37:13 20 09:37:15 21 09:37:15 22 09:37:17 23 09:37:20 24 09:37:22 25 09:37:23</p> <p style="text-align: center;">Page 4</p> <p>1 DAVID I. TABAK 2 THE VIDEOGRAPHER: This is the video operator speaking, William Pace for Merrill Legal Solutions, 225 Varick Street, New York, New York. Today is July 12, 2012, and the time is 9:36 a.m. 3 We are at the offices of Cravath Swaine & Moore LLP, 825 Eighth Avenue, New York, New York, to take the videotaped deposition of David Tabak, in the matter of in re Merck & Company, Incorporated Securities, Derivative and ERISA litigation, in the United States District Court, District of New Jersey, MDL No. 1658. 4 Counsel please introduce yourselves and state whom you represent. 5 MR. BELELIEU: Christopher Belelieu, Cravath Swaine & Moore, for Merck and several individual defendants. 6 MR. BOGESS: Matt Boggess,</p>
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10:57:03	2	DAVID I. TABAK and the work that my staff performs.	10:59:22	1	DAVID I. TABAK pulling certain data.
10:57:06	3	Q. What is your hourly rate of	10:59:23	2	Q. Do all of the people you've
10:57:11	4	compensation related to this matter?	10:59:27	3	just mentioned work at NERA?
10:57:14	5	A. It's \$690.	10:59:28	4	A. They either do or did work at
10:57:17	6	Q. Is that standard for you in	10:59:32	5	NERA.
10:57:19	7	litigation support services?	10:59:35	6	Q. And can you tell me what the
10:57:21	8	A. In 2012, yes.	10:59:37	7	positions are of the people you
10:57:23	9	Q. So your hourly rate changes on	10:59:39	8	mentioned?
10:57:30	10	an annual basis; is that correct?	10:59:40	9	A. Sure. Ronald Miller is a vice
10:57:31	11	A. It can. I think it actually	10:59:44	10	president. Stefan Boetrich is a
10:57:35	12	has changed every year. But we review	10:59:47	11	consultant. And all of the others are or
10:57:37	13	the rates annually.	10:59:50	12	were members of our research staff.
10:57:38	14	Q. And is that the same hourly	10:59:54	13	Q. And what does a consultant do
10:57:40	15	rate that you're paid for nonlitigation	10:59:56	14	in NERA?
10:57:42	16	consulting services?	10:59:57	15	MR. GRAZIANO: Objection.
10:57:43	17	A. It's the same rate that NERA	11:00:00	16	THE WITNESS: Asked and
10:57:45	18	is paid for my work on nonlitigation	11:00:00	17	answered?
10:57:47	19	consulting services. The exception of a	11:00:01	18	MR. GRAZIANO: Yeah.
10:57:51	20	fixed fee project where we don't bill by	11:00:01	19	A. As I said, they tend to work
10:57:54	21	the hour.	11:00:03	20	on a project under the direction of more
10:57:55	22	Q. Have plaintiffs' counsel paid	11:00:05	21	senior people.
10:57:56	23	you anything to date?	11:00:11	22	Q. So are any of these people in
10:57:57	24	A. I believe they paid NERA to	11:00:15	23	charge of the day-to-day assignments
10:58:00	25	date.	11:00:17	24	related to this case?
10:58:01	2	DAVID I. TABAK Q. And do you know how much	11:00:21	1	DAVID I. TABAK
10:58:02	3	they've paid NERA to date related to this	11:00:25	2	A. Ronald Miller and I may have
10:58:05	4	case?	11:00:27	3	split various of the day-to-day
10:58:05	5	A. I don't recall.	11:00:31	4	supervision. I gave broad direction, and
10:58:07	6	Q. Do you have people assisting	11:00:33	5	then the research staff sometimes
10:58:10	7	you in this case?	11:00:35	6	reported directly to me, sometimes would
10:58:13	8	A. I do.	11:00:37	7	check in with him or he would keep track
10:58:14	9	Q. And how many people are	11:00:39	8	or monitor their day-to-day work.
10:58:16	10	assisting you?	11:00:40	9	Q. Do you know how many hours
10:58:17	11	A. There probably would have been	11:00:42	10	you've worked on this case to date?
10:58:24	12	maybe half a dozen at various points in	11:00:43	11	A. I do not.
10:58:27	13	time.	11:00:45	12	Q. Can you give an estimate?
10:58:27	14	Q. Can you tell me who those	11:00:50	13	A. I really don't have a good
10:58:28	15	people are?	11:00:51	14	feel for it.
10:58:29	16	A. Sure. Shirim Hashim,	11:00:53	15	Q. I mean, have you worked five
10:58:35	17	S-h-i-r-i-m, last name H-a-s-h-i-m.	11:00:55	16	hours, have you worked a hundred hours?
10:58:38	18	Margarita Capi, last name C-a-p-i. Eric	11:00:57	17	A. Definitely more than five.
10:58:44	19	Lin. Stefan Boetrich,	11:01:00	18	Almost certainly more than a hundred.
10:58:54	20	B-o-e-t-t-r-i-c-h. Ronald Miller. Rex	11:01:02	19	Q. Do you keep track of the hours
10:59:03	21	Lam, L-a-m. Shadman Torofder,	11:01:04	20	that you've worked?
10:59:09	22	S-h-a-d-m-a-n, T-o-r-o-f-d-e-r.	11:01:05	21	A. We have a time system that
10:59:15	23	I believe that's it, putting	11:01:07	22	does.
10:59:17	24	aside for example library staff or others	11:01:10	23	Q. So somewhere in NERA that
10:59:20	25	who may have just been involved in	11:01:11	24	information, you keep that information as
					to how many hours you've worked on this

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11:01:14	1	DAVID I. TABAK	11:26:11	1	DAVID I. TABAK
11:01:14	2	case?	11:26:12	2	material that's quoted.
11:01:14	3	A. Yes.	11:26:14	3	Q. So the support staff you
11:01:14	4	Q. Have you been retained by	11:26:15	4	mentioned earlier that's working on this
11:01:20	5	counsel, by plaintiffs' counsel for	11:26:17	5	case with you from NERA, they didn't
11:01:24	6	anything other than your declaration	11:26:19	6	draft any of this report; is that
11:01:26	7	related to their motion for class	11:26:19	7	correct?
11:01:28	8	certification?	11:26:21	8	A. They worked on the exhibits
11:01:28	9	MR. GRAZIANO: I'm just going	11:26:24	9	and they, you know, created initial
11:01:29	10	to object as beyond the scope of	11:26:27	10	exhibits, I may have edited for style.
11:01:31	11	the deposition. Also, if you could	11:26:29	11	But I think they basically did the drafts
11:01:34	12	let me know when it's a good time	11:26:31	12	on that. Otherwise they reviewed my
11:01:36	13	to take a break.	11:26:33	13	work, they checked the numbers on there,
11:01:37	14	MR. BELELIEU: We'll just	11:26:36	14	and they may have suggested some spelling
11:01:38	15	finish this line of questioning.	11:26:39	15	or grammatical issues or maybe clarity
11:01:39	16	MR. GRAZIANO: You can say yes	11:26:41	16	issues. But it's basically mine.
11:01:40	17	or no.	11:26:42	17	Q. Were there any drafts of this
11:01:40	18	MR. BELELIEU: It's a yes or	11:26:43	18	report?
11:01:41	19	no answer.	11:26:43	19	A. Yes.
11:01:42	20	A. Yes. Although it's just one	11:26:44	20	Q. And did you write all of those
11:01:44	21	retention.	11:26:45	21	drafts?
11:01:47	22	Q. And is your compensation	11:26:45	22	A. I did.
11:01:48	23	contingent upon a ruling in favor of	11:26:45	23	Q. How many drafts of this report
11:01:51	24	plaintiffs on their motion for class	11:26:47	24	did you go through?
11:01:52	25	certification?	11:26:48	25	A. Well, electronically it's hard
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11:01:53	1	DAVID I. TABAK	11:26:51	1	DAVID I. TABAK
11:01:56	2	A. Neither mine nor NERA's	11:26:54	2	to say what's a draft. I open it up,
	3	compensation is contingent on that.	11:26:56	3	change a word, is it another draft? I
11:01:59	4	Q. Well, is NERA being paid for	11:26:57	4	don't know how to answer that really.
11:02:02	5	your testimony today?	11:27:01	5	Q. Okay. We can be literal about
11:02:02	6	A. NERA is being paid for my time	11:27:02	6	it. How many times did you make changes
11:02:04	7	here today. Or I assume will be. We	11:27:06	7	to a draft of this report?
11:02:10	8	haven't been paid for that yet.	11:27:09	8	A. Many. Often I'd open it up
11:02:11	9	MR. BELELIEU: Let's take a	11:27:11	9	and change a word or two when I read a
11:02:12	10	break.	11:27:13	10	sentence and it wasn't clear.
11:02:12	11	THE VIDEOGRAPHER: Going off	11:27:15	11	Q. So can you give me an estimate
11:02:13	12	the record at 11:02 a.m.	11:27:16	12	of how many times you did that?
11:02:16	13	(A recess was taken.)	11:27:19	13	A. Dozens. And also writing the
11:25:44	14	THE VIDEOGRAPHER: Returning	11:27:22	14	first draft, it wasn't in one sitting.
11:25:50	15	to the record at 11:25, and this	11:27:23	15	Q. Well, when did you start
11:25:53	16	will mark the beginning of tape	11:27:24	16	drafting this report?
11:25:54	17	No. 2.	11:27:31	17	A. Probably in January '12 I put
11:25:56	18	BY MR. BELELIEU:	11:27:34	18	together an outline of the report. So I
11:25:57	19	Q. You understand you're still	11:27:35	19	would have put in things like the scope
11:25:58	20	under oath; correct?	11:27:39	20	of the analysis and summary of findings,
11:25:59	21	A. I do.	11:27:41	21	without the actual findings, obviously,
11:26:00	22	Q. I want to turn back to your	11:27:44	22	but just a place, for example, I'd say my
11:26:03	23	declaration now. Who wrote your	11:27:47	23	findings are as follows, and leave a
11:26:09	24	declaration?	11:27:49	24	blank. Qualifications and remuneration
11:26:09	25	A. I wrote all of it other than	11:27:49	25	would have been there. Theory of market

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11:27:51	1 DAVID I. TABAK	11:29:53	1 DAVID I. TABAK
11:27:55	2 efficiency, I think I actually wrote that	11:29:55	2 would be before my staff and I analyzed
11:27:58	3 after the first draft.	11:29:55	3 the data.
11:27:59	4 But then like section 5, test	11:29:56	4 Q. Right. But I believe you told
11:28:02	5 for market efficiency, I wrote the	11:29:58	5 me that your staff conducted the
11:28:04	6 general outline. In fact I think I wrote	11:30:00	6 underlying analyses. I'm asking you did
11:28:06	7 a lot of this report just leaving blanks	11:30:02	7 you conduct any of your own underlying
11:28:08	8 for what the actual outcome of analysis	11:30:05	8 analyses related to this report?
11:28:10	9 was and the interpretation. But in terms	11:30:08	A. Oh, well, I often reviewed
11:28:14	10 of writing, what I would do, I'd often	11:30:10	what my staff did and sometimes would
11:28:15	11 fill that in at the same time as my	11:30:12	replicate it myself. I took a look at
11:28:18	12 people were starting to do the work.	11:30:15	the data. I did some research in the
11:28:22	13 Q. So you assigned certain	11:30:19	academic literature myself to see if I
11:28:27	14 sections or portions of the work for this	11:30:23	could find academic sources that either
11:28:28	15 report to your staff; is that correct?	11:30:25	supported or contradicted what I wanted
11:28:29	16 A. When you say of the report,	11:30:25	to say.
11:28:31	17 not the text of the report, but doing the	11:30:27	Q. Do you recall what academic
11:28:32	18 underlying analyses.	11:30:28	sources you reviewed?
11:28:42	19 Q. Okay. And did you provide any	11:30:30	A. Those cited over here, for
11:28:44	20 drafts of your report as you were going	11:30:34	example. There is one on the use of
11:28:46	21 through it to plaintiffs' counsel?	11:30:38	All-Star analysts that I actually cite
11:28:47	22 MR. GRAZIANO: Just object.	11:30:39	again, I believe, for the proposition
11:28:48	23 It's a yes or no question.	11:30:42	that traders in the option markets tend
11:28:49	24 A. Yes.	11:30:44	to be more sophisticated than traders in
	25 Q. And again, how many drafts	11:30:44	the stock market.
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11:28:53	1 DAVID I. TABAK	11:30:46	1 DAVID I. TABAK
11:28:55	2 would you have provided to plaintiffs'	11:30:48	2 Q. And of the underlying analyses
11:28:57	3 counsel?	11:30:50	3 that your staff did, which underlying
11:29:01	4 A. Maybe three.	11:30:53	4 analyses did you actually review?
11:29:02	5 Q. I believe you testified	11:30:55	5 A. It depends what you mean by
11:29:07	6 earlier that you said you spent, tell me	11:30:57	6 review. I looked obviously at the output
11:29:09	7 if I'm wrong, over a hundred hours on	11:31:00	7 for all of them. I also tended to go
11:29:12	8 this report. Is that correct?	11:31:02	8 through the files. If you want I can go
11:29:14	9 A. I believe that figure is	11:31:03	9 through the exhibits and tell you what I
11:29:15	10 correct.	11:31:04	10 looked at.
11:29:17	11 Q. So out of those hundred hours	11:31:08	11 Q. Sure.
11:29:19	12 or hundred plus hours, how much time did	11:31:12	12 A. Okay. So Exhibit 3 is an
11:29:23	13 you spend actually drafting the report?	11:31:16	13 analysis of the average weekly trading
11:29:28	14 A. I don't know. I don't think	11:31:19	14 volume. And I definitely looked at that
11:29:32	15 it necessarily would have been that much.	11:31:24	15 file and actually checked the results.
11:29:34	16 I write reasonably quickly.	11:31:25	16 Straightforward enough.
11:29:36	17 Q. So again, can you give me an	11:31:29	17 Exhibit 4-A, discusses the
11:29:36	18 estimate?	11:31:32	18 analysts contributing to I/B/E/S, all
11:29:36	19 A. I really can't. I just don't	11:31:39	19 caps I-/B-/E-/S, to the I/B/E/S
11:29:38	20 know.	11:31:40	20 consensus earnings estimates. And I
11:29:39	21 Q. Well, did you conduct any	11:31:43	21 looked at I believe the raw file from
11:29:41	22 research related to this report?	11:31:47	22 I/B/E/S. And certainly I looked a lot at
11:29:43	23 A. When you say research, all of	11:31:49	23 column 3 to see how to properly describe
11:29:48	24 the analyses there are based on data.	11:31:51	24 the results.
11:29:51	25 It's not as if I knew what the answers		Exhibit 4-B talks about the

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